

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

ORDER  
04-CR-30A

SAKHWAT ULLAH, JR.,

Defendant.

Currently before the Court are defendant Sakhwat Ullah's objections to a Report and Recommendation and Decision and Order of Magistrate Judge Leslie G. Foschio filed on March 17, 2005. The Court finds that an evidentiary hearing is needed to resolve the defendant's objections to Magistrate Judge Foschio's recommendation regarding his motion to suppress statements and evidence which he claims were obtained in violation of his Fourth and Fifth Amendment rights.

Accordingly, an evidentiary hearing is hereby scheduled for March 22, 2006, at 10:00 a.m. The evidentiary hearing will relate solely to the defendant's motion to suppress statements and evidence purportedly obtained in violation of his constitutional rights.

In his Report and Recommendation, Magistrate Judge Foschio determined that the defendant lacked the protections accorded under the

Fourth and Fifth Amendment because he is an alien who has not established a significant voluntary connection with the United States. The defendant has objected to this finding. The Court notes that it has received a letter from the American Civil Liberties Union (ACLU) requesting an opportunity to provide an amicus curiae brief on the issue of whether an alien lacks constitutional protections under the circumstances of this case. The defendant has expressed his consent to the filing of an amicus brief with the ACLU. The government opposes the ACLU's request to participate. At this juncture, the Court finds it unnecessary to address that limited legal issue. Instead, the Court will focus on whether the defendant's constitutional rights were violated, assuming he had such rights. In the event that the Court finds it necessary to address the alternative holding, the Court may grant the ACLU's request to provide an amicus curiae brief.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: February 16 , 2006